

## Pension Benefit Guaranty Corporation

## § 4003.1

### § 4002.8 Alternate voting procedure.

(a) A Director shall be deemed to have participated in a meeting of the Board of Directors for all purposes if,

(1) That Director was represented at that meeting by an individual who was designated to act on his behalf, and

(2) That Director ratified in writing the actions taken by his designee at that meeting within a reasonable period of time after such meeting.

(b) For purposes of this section, a Director, including an individual serving as Acting Secretary, shall designate a representative at a level not below that of Assistant Secretary within his Department. Such designation shall be in writing and shall be effective until withdrawn or until a date specified therein.

(c) For purposes of this section, a Director's approval of the minutes of a meeting of the Board of Directors shall constitute ratification of the actions of his designee at such meeting.

### § 4002.9 Amendments.

These bylaws may be amended or new bylaws adopted by unanimous vote of the Board.

## PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

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AUTHORITY: 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34012, July 1, 1996, unless otherwise noted.

### Subpart A—General Provisions

#### § 4003.1 Purpose and scope.

(a) *Purpose.* This part sets forth the rules governing the issuance of all initial determinations by the PBGC on cases pending before it involving the matters set forth in paragraph (b) of this section and the procedures for requesting and obtaining administrative review by the PBGC of those determinations. Subpart A contains general provisions. Subpart B sets forth rules governing the issuance of all initial determinations of the PBGC on matters covered by this part. Subpart C establishes procedures governing the reconsideration by the PBGC of initial determinations relating to the matters set forth in paragraphs (b)(1) through (b)(4). Subpart D establishes procedures governing administrative appeals from initial determinations relating to the matters set forth in paragraphs (b)(5) through (b)(10).

(b) *Scope.* This part applies to the following determinations made by the PBGC in cases pending before it and to the review of those determinations:

(1) Determinations that a plan is covered under section 4021 of ERISA;

(2) Determinations with respect to premiums, interest and late payment

penalties pursuant to section 4007 of ERISA;

(3) Determinations with respect to voluntary terminations under section 4041 of ERISA, including—

(i) A determination that a notice requirement or a certification requirement under section 4041 of ERISA has not been met,

(ii) A determination that the requirements for demonstrating distress under section 4041(c)(2)(B) of ERISA have not been met, and

(iii) A determination with respect to the sufficiency of plan assets for benefit liabilities or for guaranteed benefits;

(4) Determinations with respect to allocation of assets under section 4044 of ERISA, including distribution of excess assets under section 4044(d);

(5) Determinations that a plan is not covered under section 4021 of ERISA;

(6) Determinations under section 4022 (a) or (c) or section 4022A(a) of ERISA with respect to benefit entitlement of participants and beneficiaries under covered plans and determinations that a domestic relations order is or is not a qualified domestic relations order under section 206(d)(3) of ERISA and section 414(p) of the Code;

(7) Determinations under section 4022 (b) or (c), section 4022A (b) through (e), or section 4022B of ERISA of the amount of benefits payable to participants and beneficiaries under covered plans;

(8) Determinations of the amount of money subject to recapture pursuant to section 4045 of ERISA;

(9) Determinations of the amount of liability under section 4062(b)(1), section 4063, or section 4064 of ERISA;

(10) Determinations—

(i) That the amount of a participant's or beneficiary's benefit under section 4050(a)(3) of ERISA has been correctly computed based on the designated benefit paid to the PBGC under section 4050(b)(2) of ERISA, or

(ii) That the designated benefit is correct, but only to the extent that the benefit to be paid does not exceed the participant's or beneficiary's guaranteed benefit.

(c) *Matters not covered by this part.* Nothing in this part limits—

(1) The authority of the PBGC to review, either upon request or on its own initiative, a determination to which this part does not apply when, in its discretion, the PBGC determines that it would be appropriate to do so, or

(2) The procedure that the PBGC may utilize in reviewing any determination to which this part does not apply.

**§ 4003.2 Definitions.**

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, multiemployer plan, PBGC, person, plan administrator, and single-employer plan.

In addition, for purposes of this part:

*Aggrieved person* means any participant, beneficiary, plan administrator, contributing sponsor of a single-employer plan or member of such a contributing sponsor's controlled group, plan sponsor of a multiemployer plan, or employer that is adversely affected by an initial determination of the PBGC with respect to a pension plan in which such person has an interest. The term "beneficiary" includes an alternate payee (within the meaning of section 206(d)(3)(K) of ERISA) under a qualified domestic relations order (within the meaning of section 206(d)(3)(B) of ERISA).

*Appeals Board* means a board consisting of three PBGC officials. The Executive Director shall appoint a senior PBGC official to serve as Chairperson and three or more other PBGC officials to serve as regular Appeals Board members. The Chairperson shall designate the three officials who will constitute the Appeals Board with respect to a case, provided that a person may not serve on the Appeals Board with respect to a case in which he or she made a decision regarding the merits of the determination being appealed. The Chairperson need not serve on the Appeals Board with respect to all cases.

*Appellant* means any person filing an appeal under subpart D of this part.

*Director* means the Director of any department of the PBGC and includes the Executive Director of the PBGC, Deputy Executive Directors, and the General Counsel.

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### **§ 4003.3 PBGC assistance in obtaining information.**

A person who lacks information or documents necessary to file a request for review pursuant to subpart C or D of this part, or necessary to a decision whether to seek review, or necessary to participate in an appeal pursuant to § 4003.57 of this part or necessary to a decision whether to participate, may request the PBGC's assistance in obtaining information or documents in the possession of a party other than the PBGC. The request shall state or describe the missing information or documents, the reason why the person needs the information or documents, and the reason why the person needs the assistance of the PBGC in obtaining the information or documents. The request may also include a request for an extension of time to file pursuant to § 4003.4 of this part.

### **§ 4003.4 Extension of time.**

(a) *General rule.* When a document is required under this part to be filed within a prescribed period of time, an extension of time to file will be granted only upon good cause shown and only when the request for an extension is made before the expiration of the time prescribed. The request for an extension shall be in writing and state why additional time is needed and the amount of additional time requested. The filing of a request for an extension shall stop the running of the prescribed period of time. When a request for an extension is granted, the PBGC shall notify the person requesting the extension, in writing, of the amount of additional time granted. When a request for an extension is denied, the PBGC shall so notify the requestor in writing, and the prescribed period of time shall resume running from the date of denial.

(b) *Disaster relief.* When the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend the due date for filing a request for reconsideration under § 4003.32 or an appeal under § 4003.52 by up to 180 days.

(1) The due date extension or extensions shall be available only to an aggrieved person who is residing in, or whose principal place of business is within, a designated disaster area, or with respect to whom the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the request for reconsideration or appeal is within a designated disaster area; and

(2) The request for reconsideration or appeal shall identify the filing as one for which the due date extension is available.

### **§ 4003.5 Non-timely request for review.**

The PBGC will process a request for review of an initial determination that was not filed within the prescribed period of time for requesting review (see §§ 4003.32 and 4003.52) if—

(a) The person requesting review demonstrates in his or her request that he or she did not file a timely request for review because he or she neither knew nor, with due diligence, could have known of the initial determination; and

(b) The request for review is filed within 30 days after the date the aggrieved person, exercising due diligence at all relevant times, first learned of the initial determination where the requested review is reconsideration, or within 45 days after the date the aggrieved person, exercising due diligence at all relevant times, first learned of the initial determination where the request for review is an appeal.

### **§ 4003.6 Representation.**

A person may file any document or make any appearance that is required or permitted by this part on his or her own behalf or he or she may designate a representative. When the representative is not an attorney-at-law, a notarized power of attorney, signed by the person making the designation, which authorizes the representation and specifies the scope of representation shall be filed with the PBGC in accordance with § 4003.9(b) of this part.

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### **§ 4003.7 Exhaustion of administrative remedies.**

Except as provided in § 4003.22(b), a person aggrieved by an initial determination of the PBGC covered by this part, other than a determination subject to reconsideration that is issued by a Department Director, has not exhausted his or her administrative remedies until he or she has filed a request for reconsideration under subpart C of this part or an appeal under subpart D of this part, whichever is applicable, and a decision granting or denying the relief requested has been issued.

### **§ 4003.8 Request for confidential treatment.**

If any person filing a document with the PBGC believes that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, he or she shall specify the information with respect to which confidentiality is claimed and the grounds therefor.

### **§ 4003.9 Filing of documents.**

(a) *Date of filing.* Any document required or permitted to be filed under this part is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, provided that—

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly packaged and addressed to the PBGC.

If the conditions stated in both paragraphs (a)(1) and (a)(2) of this section are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular business hours are considered filed on the next regular business day.

(b) *Where to file.* Any document required or permitted to be filed under this part in connection with a request for reconsideration shall be submitted to the Director of the department within the PBGC that issued the initial determination. Any document required or permitted to be filed under this part in connection with an appeal shall be submitted to the Appeals Board, Pension

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Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

### **§ 4003.10 Computation of time.**

In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a Federal holiday.

## **Subpart B—Initial Determinations**

### **§ 4003.21 Form and contents of initial determinations.**

All determinations to which this subpart applies shall be in writing, shall state the reason for the determination, and, except when effective on the date of issuance as provided in § 4003.22(b), shall contain notice of the right to request review of the determination pursuant to subpart C or subpart D of this part, as applicable, and a brief description of the procedures for requesting review.

### **§ 4003.22 Effective date of determinations.**

(a) *General rule.* Except as provided in paragraph (b) of this section, an initial determination covered by this subpart will not become effective until the prescribed period of time for filing a request for reconsideration under subpart C of this part or an appeal under subpart D of this part, whichever is applicable, has elapsed. The filing of a request for review under subpart C or D of this part shall automatically stay the effectiveness of a determination until a decision on the request for review has been issued by the PBGC.

(b) *Exception.* The PBGC may, in its discretion, order that the initial determination in a case is effective on the date it is issued. When the PBGC makes such an order, the initial determination shall state that the determination is effective on the date of

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issuance and that there is no obligation to exhaust administrative remedies with respect to that determination by seeking review of it by the PBGC.

### **Subpart C—Reconsideration of Initial Determinations**

#### **§ 4003.31 Who may request reconsideration.**

Any person aggrieved by an initial determination of the PBGC to which this subpart applies may request reconsideration of the determination.

#### **§ 4003.32 When to request reconsideration.**

Except as provided in §§ 4003.4 and 4003.5, a request for reconsideration must be filed within 30 days after the date of the initial determination of which reconsideration is sought or, when administrative review includes a procedure in § 4903.33 of this chapter, by a date 60 days (or more) thereafter that is specified in the PBGC's notice of the right to request review.

#### **§ 4003.33 Where to submit request for reconsideration.**

A request for reconsideration shall be submitted to the Director of the department within the PBGC that issued the initial determination, except that a request for reconsideration of a determination described in § 4003.1(b)(3)(ii) shall be submitted to the Executive Director.

#### **§ 4003.34 Form and contents of request for reconsideration.**

A request for reconsideration shall—

- (a) Be in writing;
- (b) Be clearly designated as a request for reconsideration;
- (c) Contain a statement of the grounds for reconsideration and the relief sought; and
- (d) Reference all pertinent information already in the possession of the PBGC and include any additional information believed to be relevant.

#### **§ 4003.35 Final decision on request for reconsideration.**

(a) Except as provided in paragraphs (a)(1) or (a)(2), final decisions on requests for reconsideration will be

issued by the same department of the PBGC that issued the initial determination, by an official whose level of authority in that department is higher than that of the person who issued the initial determination.

(1) When an initial determination is issued by a Department Director, the Department Director (or an official designated by the Department Director) will issue the final decision on request for reconsideration of a determination other than one described in § 4003.1(b)(3)(ii).

(2) The Executive Director (or an official designated by the Executive Director) will issue the final decision on a request for reconsideration of a determination described in § 4003.1(b)(3)(ii).

(b) The final decision on a request for reconsideration shall be in writing, specify the relief granted, if any, state the reason(s) for the decision, and state that the person has exhausted his or her administrative remedies.

### **Subpart D—Administrative Appeals**

#### **§ 4003.51 Who may appeal or participate in appeals.**

Any person aggrieved by an initial determination to which this subpart applies may file an appeal. Any person who may be aggrieved by a decision under this subpart granting the relief requested in whole or in part may participate in the appeal in the manner provided in § 4003.57.

#### **§ 4003.52 When to file.**

Except as provided in §§ 4003.4 and 4003.5, an appeal under this subpart must be filed within 45 days after the date of the initial determination being appealed or, when administrative review includes a procedure in § 4903.33 of this chapter, by a date 60 days (or more) thereafter that is specified in the PBGC's notice of the right to request review.

#### **§ 4003.53 Where to file.**

An appeal or a request for an extension of time to appeal shall be submitted to the Appeals Board, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

**§ 4003.54 Contents of appeal.**

- (a) An appeal shall—
  - (1) Be in writing;
  - (2) Be clearly designated as an appeal;
  - (3) Contain a statement of the grounds upon which it is brought and the relief sought;
  - (4) Reference all pertinent information already in the possession of the PBGC and include any additional information believed to be relevant;
  - (5) State whether the appellant desires to appear in person or through a representative before the Appeals Board; and
  - (6) State whether the appellant desires to present witnesses to testify before the Appeals Board, and if so, state why the presence of witnesses will further the decision-making process.
- (b) In any case where the appellant believes that another person may be aggrieved if the PBGC grants the relief sought, the appeal shall also include the name(s) and address(es) (if known) of such other person(s).

**§ 4003.55 Opportunity to appear and to present witnesses.**

- (a) At the discretion of the Appeals Board, any appearance permitted under this subpart may be before a hearing officer designated by the Appeals Board.
- (b) An opportunity to appear before the Appeals Board (or a hearing officer) and an opportunity to present witnesses will be permitted at the discretion of the Appeals Board. In general, an opportunity to appear will be permitted if the Appeals Board determines that there is a dispute as to a material fact; an opportunity to present witnesses will be permitted when the Appeals Board determines that witnesses will contribute to the resolution of a factual dispute.
- (c) Appearances permitted under this section will take place at the main offices of the PBGC, 1200 K Street NW., Washington, DC 20005-4026, unless the Appeals Board, in its discretion, designates a different location, either on its own initiative or at the request of the appellant or a third party participating in the appeal.

**§ 4003.56 Consolidation of appeals.**

- (a) *When consolidation may be required.* Whenever multiple appeals are filed that arise out of the same or similar facts and seek the same or similar relief, the Appeals Board may, in its discretion, order the consolidation of all or some of the appeals.
- (b) *Representation of parties.* Whenever the Appeals Board orders the consolidation of appeals, the appellants may designate one (or more) of their number to represent all of them for all purposes relating to their appeals.
- (c) *Decision by Appeals Board.* The decision of the Appeals Board in a consolidated appeal shall be binding on all appellants whose appeals were subject to the consolidation.

**§ 4003.57 Appeals affecting third parties.**

- (a) Before the Appeals Board issues a decision granting, in whole or in part, the relief requested in an appeal, it shall make a reasonable effort to notify third persons who will be aggrieved by the decision of the following:
  - (1) The pendency of the appeal;
  - (2) The grounds upon which the appeal is based;
  - (3) The grounds upon which the Appeals Board is considering reversing the initial determination;
  - (4) The right to submit written comments on the appeal;
  - (5) The right to request an opportunity to appear in person or through a representative before the Appeals Board and to present witnesses; and
  - (6) That no further opportunity to present information to the PBGC with respect to the determination under appeal will be provided.
- (b) Written comments and a request to appear before the Appeals Board must be filed within 45 days after the date of the notice from the Appeals Board.
- (c) If more than one third party is involved, their participation in the appeal may be consolidated pursuant to the provisions of § 4003.56.

**§ 4003.58 Powers of the Appeals Board.**

In addition to the powers specifically described in this part, the Appeals Board may request the submission of any information or the appearance of

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any person it considers necessary to resolve a matter before it and to enter any order it considers necessary for or appropriate to the disposition of any matter before it.

### § 4003.59 Decision by the Appeals Board.

(a) In reaching its decision, the Appeals Board shall consider those portions of the file relating to the initial determination, all material submitted by the appellant and any third parties in connection with the appeal, and any additional information submitted by PBGC staff.

(b) The decision of the Appeals Board constitutes the final agency action by the PBGC with respect to the determination which was the subject of the appeal and is binding on all parties who participated in the appeal and who were notified pursuant to § 4003.57 of their right to participate in the appeal.

(c) The decision of the Appeals Board shall be in writing, specify the relief granted, if any, state the bases for the decision, including a brief statement of the facts or legal conclusions supporting the decision, and state that the appellant has exhausted his or her administrative remedies.

### § 4003.60 Referral of appeal to the Executive Director.

The Appeals Board may, in its discretion, refer any appeal to the Executive Director of the PBGC for decision. In such a case, the Executive Director shall have all the powers vested in the Appeals Board by this subpart and the decision of the Executive Director shall meet the requirements of and have the effect of a decision issued under § 4003.59 of this part.

### § 4003.61 Action by a single Appeals Board member.

(a) *Authority to act.* Notwithstanding any other provision of this part, any member of the Appeals Board has the authority to take any action that the Appeals Board could take with respect to a routine appeal as defined in paragraph (b) of this section.

(b) *Routine appeal defined.* For purposes of this section, a routine appeal is any appeal that does not raise a significant issue of law or a precedent-setting issue. This would generally include any appeal that—

(1) Is outside the jurisdiction of the Appeals Board (for example, an appeal challenging the plan's termination date);

(2) Is filed by a person other than an aggrieved person or an aggrieved person's authorized representative;

(3) Is untimely and presents no grounds for waiver or extension of the time limit for filing the appeal, or only grounds that are clearly without merit;

(4) Presents grounds that clearly warrant or clearly do not warrant the relief requested;

(5) Presents only factual issues that are not reasonably expected to affect other appeals (for example, the participant's date of birth or date of hire); or

(6) Presents only issues that are controlled by settled principles of existing law, including Appeals Board precedent (for example, an issue of plan interpretation that has been resolved by the Appeals Board in a decision on an appeal by another participant in the same plan).

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